

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

ROBERT D. SLATER, III,	)	
	)	
Plaintiff	)	
	)	
v.	)	Civil No. 96-0228-B
	)	
NELSON RILEY, et al.,	)	
	)	
Defendants	)	

***RECOMMENDED DECISION***

Plaintiff has filed this *pro se* Complaint under 42 U.S.C. § 1983. He seeks leave to proceed *in forma pauperis*.

Plaintiff's Complaint sets forth a series of events that allegedly occurred at the Maine Correctional Institution between August 22, 1996 and September 26, 1996, which he argues violated several of his constitutional rights. In several respects, Plaintiff has failed to state a cognizable claim under section 1983.

First, a prisoner's placement within the prison system does not involve a liberty interest independently protected by the due process clause. *Olim v. Wakinekona*, 461 U.S. 238, 245 (1983); *Hewitt v. Helms*, 459 U.S. 460, 468 (1983). Only the State may afford constitutional status to such a claim. *Hewitt*, 459 U.S. at 466 (citation omitted). The State of Maine has not done so. *Clark v. Commissioner*, 512 A.2d 327 (Me. 1986). Accordingly, to the extent Plaintiff is attempting to state a claim on the basis of his transfer within the Maine Correctional Institution (§ 1), the claim is properly dismissed as frivolous within the meaning of 28 U.S.C. § 1915.

Second, there are four named Defendants in this action. However, the Complaint sets forth affirmative action on the part of only one of these Defendants; Scott Hardcastle (§§ 2-12). To the

extent Plaintiff names Defendant Tim House in the Complaint, this Defendant is described as having responded to Plaintiff's pleas for assistance (§§ 13-20). There is no *respondeat superior* liability under section 1983. *Monell v. Department of Soc. Serv.*, 436 U.S. 658, 691 (1978). A defendant may only be held liable for his or her own acts or omissions. *Id.* Because Plaintiff has alleged no acts or omissions amounting to a constitutional violation on the part of Defendants Riley, Mahoney and House, the Complaint should be dismissed as to these Defendants.

Third, Plaintiff appears to be attempting to assert a claim for inadequate medical treatment (§ 22). However, he has named no individual who purportedly rendered inadequate care or refused him care. Accordingly, this claim should also be dismissed.

Remaining for resolution is Plaintiff's claim of excessive force against Defendant Hardcastle. As to this claim, Plaintiff alleges that he filed a grievance within the Maine Correctional Institution to which he received no response. However, it is apparent from the face of the Complaint that Plaintiff's grievance could not have been filed earlier than September 26, 1996. The Court is satisfied that Plaintiff has not exhausted his administrative remedies, where the State has had insufficient time in which to respond. The Complaint could properly be dismissed for this reason alone. 42 U.S.C. § 1997e(a), *as amended by* Act of April 26, 1996.

However, in the interest of judicial economy and in light of Plaintiff's *pro se* status, the Court concludes that the more appropriate resolution is to stay this action for a period of sixty days. At the expiration of that period, Plaintiff should be required to notify the Court of the status of his administrative grievance.

In the immediate future, however, I recommend that Plaintiff's Application to Proceed *in Forma Pauperis* be granted as to the claims in paragraphs 2 through 12 of the Complaint against Defendant Hardcastle. Plaintiff is nevertheless required to pay the filing fee of \$120.

Pursuant to 28 U.S.C. § 1915(b), an initial partial filing fee should be assessed in the amount of \$3.96. Plaintiff should be ordered to forward the initial partial filing fee to the Court no later than November 8, 1996, with subsequent payments forwarded directly by the institution each time the amount in Plaintiff's inmate account exceeds \$10 until such time as the entire filing fee of \$120 has been paid. Should Plaintiff fail to timely pay the initial partial filing fee, this action should be dismissed for lack of prosecution.

### ***Conclusion***

Accordingly, I hereby recommend Plaintiff's Complaint be DISMISSED as frivolous EXCEPT as to the claims in paragraphs 2 through 12 against Defendant Hardcastle. As to these claims, I recommend that Plaintiff's Application to Proceed *in Forma Pauperis* be GRANTED, and that Plaintiff be afforded until November 8, 1996 to pay the initial partial filing fee of \$3.96 failing which the matter should be dismissed in its entirety. I further recommend the action be STAYED for a period of sixty days following November 8, 1996, at which time Plaintiff should be required to notify the Court as to the status of his grievance within the Maine State Prison System, failing which the matter should be dismissed for Plaintiff's failure to exhaust his administrative remedies.

### NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1988) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

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Eugene W. Beaulieu  
United States Magistrate Judge

Dated in Bangor, Maine on October 10, 1996.